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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,048	01/17/2002	Paul M. Davis	1073.9370001/DKSC/RLP	1191

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EXAMINER

PATTERSON, MARIE D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 07/02/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,048

Applicant(s)

DAVIS ET AL.

Examiner

Marie Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 7, 16, 21-23 and 25-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-15, 17-20, 24 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Election/Restrictions

1. Applicant's election without traverse of Species I, subspecies A in Paper No. 10 is acknowledged.
2. Claims 7, 16, 21-23, and 25-36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and/or subspecies, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.

Claim Rejections - 35 USC § 112

3. Claims 5, 6, 13-15, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 5, 13, and 14 the phrase "said throat" lacks antecedent basis rendering the claim vague and indefinite.

In claim 24 the phrase "wraps around said portion of said human" is vague and indefinite because it defines the article in reference to a human which is undefined.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 20, 24, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Cherubini (5015251).

Cherubini shows an article of clothing with an opening (shown in figure 4) in which a human portion (32) is placed and it being formed from a material with hooks (21) on one side and pile (20) on the other.

6. Claims 1-3, 5, 6, 11, 12, 14, 15, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Petker (4751784).

Petker shows footwear comprising a sole (12), an upper (14 and 15) with a portion which has one side of hooks (17) and the other side of pile (entire footwear is made from pile material), and a strap (14) as claimed.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5, 8, 11-14, 17, 20, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (4969277) in view of Petker (4751784).

Williams shows footwear comprising a sole (15), an upper (17 and 19), a portion with a plurality of hooks (63/71), two straps (55 and 59), and one strap being a heel strap

(59) substantially as claimed except for the portion which has the plurality of hooks thereon having a pile surface on the other side. Petker teaches forming footwear from pile material and providing a plurality of hooks (17) on a portion thereof thereby resulting in a portion of the footwear having hooks on one side and pile on the other. It would have been obvious to form the footwear from pile material as taught by Petker in the footwear of Williams to reduce the cost of manufacture, provide a disposable footwear, provide a comfortable footwear.

9. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 11 above, and further in view of Kennedy (5744080).

Either Williams as modified above or Petker as described above shows footwear substantially as claimed except for the hooks being providing as a single ply with the pile. Kennedy teaches forming hooks and pile as a single ply (see figures 7 and 8). It would have been obvious to form the hooks as a single ply with the pile as taught by Kennedy in the footwear of either Williams as modified above or Petker as described above to provide a secure attachment of the hooks to the pile material.

10. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-5, 8, 11-14, 17, 20, and 24 above, and further in view of Kuehnreich (5176624).

Williams as modified above shows footwear substantially as claimed except for the heel portion being formed of two overlapping straps. Kuehnreich teaches forming a heel area as two overlapping straps (10 and 11). It would have been obvious to form

the heel as two overlapping straps as taught by Kuehnreich in the footwear of Williams as modified above to increase the adjustability of the footwear in the heel area.

11. Claims 1-5, 11-14, 20, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friton (4486965) in view of Petker (4751784).

Friton shows footwear comprising a sole (12), an upper (14), a portion with a plurality of hooks (38), and two straps (24 and 30) substantially as claimed except for the portion which has the plurality of hooks thereon having a pile surface on the other side. Petker teaches forming footwear from pile material and providing a plurality of hooks (17) on a portion thereof thereby resulting in a portion of the footwear having hooks on one side and pile on the other. It would have been obvious to form the footwear from pile material as taught by Petker in the footwear of Friton to reduce the cost of manufacture, provide a disposable footwear, provide a comfortable footwear.

12. Claims 1-3, 5, 6, 11, 12, 14, 15, 20, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Famolare, Jr. (4114297) in view of Petker (4751784).

Famolare, Jr. shows footwear comprising a sole (12), an upper (11), a portion with a plurality of "Velcro" fasteners(20) which extends from the throat of the footwear to the sole, and a strap (26) substantially as claimed except for the portion having "Velcro" fasteners thereon having hooks and pile. Petker teaches forming footwear from pile material and providing a plurality of hooks (17) as the Velcro fasteners on a portion of the upper thereby resulting in a portion of the footwear having hooks on one side and pile on the other. It would have been obvious to form the footwear from pile material as

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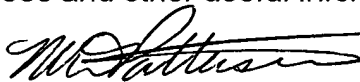
taught by Petker in the footwear of Famolare, Jr to reduce the cost of manufacture, provide a disposable footwear, provide a comfortable footwear.

1. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**. For applicant's convenience, the Group Technological Center FAX number is (703) 872-9302. (Note that the Examiner **cannot** confirm receipt of faxes) Please identify Examiner ____ of Art Unit ____ at the top of your cover sheet of any correspondence submitted.

Inquiries only concerning the **merits** of the examination should be directed to Marie Patterson whose telephone number is (703) 308-0069.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to (703) 308-1337.

Check out our web-site at "www.uspto.gov" for fees and other useful information.



Marie Patterson
Primary Examiner
Art Unit 3728